

BEFORE NANCY KEENAN, SUPERINTENDENT OF PUBLIC INSTRUCTION

STATE OF MONTANA

\* \* \* \* \*

GWEN BROTT,	)	
	)	
Appellant,	)	OSPI 234-94
	)	
vs.	)	
	)	
SCHOOL DISTRICT NO. 9, BROWNING	)	<u>DECISION AND</u>
PUBLIC SCHOOLS,	)	<u>ORDER</u>
	)	
Respondent.	)	

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PROCEDURAL HISTORY AND FACTS OF THIS APPEAL

This is an appeal by Gwen Brott of the acting Glacier County Superintendent's January 6, 1994, decision to grant the Browning School District's [hereinafter "the District"] Motion to Dismiss for lack of jurisdiction.

Ms. Brott held the non-certified, non-tenured position of district drug and alcohol coordinator with a year to year contract. The last contract between Ms. Brott and the District expired June 18, 1993. On May 11, 1993, the District Trustees voted not to renew her contract for the 1993-94 school year. Because Ms. Brott did not hold a position subject to the tenure laws, the procedural steps in § 20-4-204 and 206, MCA, did not apply.

Ms. Brott filed a Notice of Appeal with the County Superintendent on June 9, 1993, but did not file with or serve the District. After some exchanges about jurisdiction and

timeliness, she renewed her appeal on August 31, 1993. The only issue she raised was whether the District decision not to issue a new contract for the 1993-1994 school year was based on political and race discrimination in violation of the Montana Human Rights Act and Title VII of the U.S. Civil Rights Act of 1964.

The District moved to dismiss based on failure to file a timely appeal and lack of jurisdiction. The County Superintendent ruled that the appeal was timely but agreed with the District that county superintendents lack jurisdiction over allegations of discrimination based on race and political belief. Ms. Brott appealed to the State Superintendent. The District did not appeal the ruling on the timelines of the appeal.

#### STANDARD OF REVIEW

The State Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, MCA, and adopted by this Superintendent in ARM 10.6.125. Findings of fact are reviewed under a clearly erroneous standard and conclusions of law are reviewed to determine if the correct standard of law was applied. See, for example, Harris v. Trustees, Cascade County School Districts No. 6 and F, and Nancy Keenan, 241 Mont. 274, 786 P.2d 1164 (1990) and Steer, Inc. v. Dept. of Revenue, 245 Mont. 470, at 474, 803 P.2d at 603 (1990).

Granting a motion to dismiss based on lack of jurisdiction is a conclusion of law. On review, this Superintendent uses the standard that motions to dismiss are viewed with disfavor and are considered from the perspective most favorable to the opposing party. Buttrell v. McBride Land and Livestock, 170 Mont. 296, 553 P.2d 407 (1976). Bland v. Libby School District No. 4, OSPI 205-92, 12 Ed.Law 76 (June, 1993)

#### DECISION AND ORDER

The County Superintendent correctly concluded that Ms. Brott's appeal should be dismissed. The order is AFFIRMED.

#### MEMORANDUM OPINION

The only issue on appeal is whether a county superintendent has jurisdiction to decide claims arising from the Montana Human Rights Act, Title 49, chapter 2 [MHRA]. The MHRA establishes rights and duties that apply to many entities, including school districts. Rights under the MHRA must be enforced pursuant to the provisions of the Act, which establish exclusive jurisdiction in the Montana Human Rights Commission. Section 49-2-509(7), MCA, states in part:

(7) The provisions of this chapter [Title 49, chapter 2, MCA] establish the exclusive remedy for acts constituting an alleged violation of this chapter, including acts that may otherwise also constitute a violation of discrimination provisions in Article II, Section 4, of the Montana constitution or 49-1-102. . . (emphasis added)

The Montana Supreme Court has held that this statute requires individuals who wish to bring an action for a violation of rights protected under the MHRA to file their initial claim

with the Montana Human Rights Commission. Harrison v. Chance, 244 Mont. 215, 797 P.2d 200 (1990).

Prior to the Supreme Court ruling, this Superintendent had already stated that county superintendents do not have jurisdiction to hear and decide discrimination allegations under the MHRA:

As to Appellant's allegations of discrimination, her administrative forum is the Human Rights Commission. Section 49-2-501, 49-2-504(7), MCA . . .

Irving v. Board of Education, School District No. 1, Valley County, OSPI 162-88, 8 Ed.Law 57 at 59 (1989)

Ms. Brott argues that because this dispute began in a school it is a "controversy arising in the county as a result of decisions of the trustees" as that phrase is used in § 20-3-210, MCA. This Superintendent has consistently held that not every disagreement that occurs in a school setting gives rise to the right to a contested case hearing before a county superintendent.

Section 20-3-210, MCA (and §§ 20-3-107 and 20-10-132, MCA) are procedural, not jurisdictional, statutes. County superintendents do not have a grant of general jurisdiction to hear and decide every dispute that may arise in a school setting. They do not have the power to set aside trustees' lawful exercise of discretion for example. See Hedges v. Lake County Transportation Committee, OSPI 219-93, 12 Ed.Law 170 (October, 1993). County superintendents also do not have the jurisdiction to rule on all matters of law that somehow may be related to schools. County superintendents have the power to conduct

administrative hearings to issue findings of fact and conclusions of law in areas that are within their field of expertise under Title 20. They do not have the jurisdiction to rule on questions of law outside of Title 20. For example, they cannot not hear tort claims and they do not hear actions arising out of the Montana Human Rights Act.

As stated in Althea Smith v. Board of Trustees, Judith Basin County School District No. 12, OSPI 200-91, 11 Ed.Law 65 at 66 (1992), Cause No CDV-92-1331, First Judicial District, Lewis & Clark County, 12 Ed.Law 24 (1993) (affirmed on other grounds):


Unless a claimant has a case in controversy (contested case), the administrative process is not invoked and the county superintendent is without jurisdiction to hear the complaint and the complaint must be dismissed.

To find that § 20-3-210, MCA, confers unlimited jurisdiction on a county superintendent leads to absurd results. I cannot believe that the legislature intended to subject every decision of a board of trustees to judicial review.

This remains the position of this Superintendent on the extent of the jurisdiction of state and county superintendents of schools and will be consistently applied by the Office of Public Instruction.

The County Superintendent's order dismissing this appeal is AFFIRMED.

DATED this 29<sup>th</sup> day of January, 1996.

  
NANCY KEENAN

BROTT.234

CERTIFICATE OF SERVICE


THIS IS TO CERTIFY that on this 6<sup>TH</sup> day of February, 1996, a true and exact copy of the foregoing DECISION AND ORDER was mailed, postage prepaid, to the following:

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